

MF 98-3

Tax Type: MOTOR FUEL TAX

Issue: Whether Purchase Of Fuel Was A Taxable Transaction
Statute of Limitations Application

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 98-ST-
v.)	Acct #
)	NTL #
XYZ OIL CORPORATION)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Paul E. Adami of Mohan, Alewelt, Prillaman & Adami for XYZ Oil Corporation.

Synopsis:

On November 12, 1997, the Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to XYZ Oil Corporation ("taxpayer") for motor fuel tax. The taxpayer timely protested the NTL. An evidentiary hearing was held during which the taxpayer argued that the NTL should be dismissed because it was not based on a taxable transaction. After reviewing the record, it is recommended that the NTL be dismissed.

FINDINGS OF FACT:

1. The taxpayer receives unleaded gasoline at a location in Illinois known as the FICTITIOUS transfer point. The taxpayer does not own the facility at this location. (Tr. pp. 17, 24)

2. The taxpayer's records indicate that in January 1987, Texaco sent a total of 813,372 gallons of unleaded gasoline to the taxpayer at the FICTITIOUS location. The taxpayer's Inventory Summary Report for January 1987 shows that one of the shipments on January 16, 1987 was for 25,788 gallons. (Taxpayer Ex. #3; Tr. p. 19)

3. From December 1986 to October 1997, the only point to which gasoline from the FICTITIOUS location was delivered was to Mexico, Missouri on the Arco pipeline. This terminal is owned by the taxpayer. (Taxpayer Ex. #2; Tr. pp. 17-20)

4. The taxpayer's Inventory Summary Report for January 1987 shows that all of the gallons at the FICTITIOUS location were delivered to Mexico, Missouri except the 25,788 gallons. Therefore, the ending inventory for January 1987 was 25,788 gallons. (Taxpayer Ex. #3; Tr. p. 19)

5. From June 1993 to September 1997, the taxpayer's motor fuel tax returns show an unleaded gasoline ending inventory balance of 25,788 gallons in Illinois. (Dept. Ex. #2; Tr. pp. 10-11)

6. In October of 1997, the taxpayer filed an updated Application for License (Form RMFT-2). While preparing the application, the taxpayer's Excise Tax Manager, JOHN DOE, realized that the taxpayer actually had no gasoline at the Illinois location. As a result, the taxpayer wrote off the 25,788 gallons from the inventory in October 1997. (Taxpayer Ex. #4; Tr. pp. 9, 21, 36)

7. For October 1997, the taxpayer filed a motor fuel tax return showing an ending inventory balance of zero. (Dept. Ex. #2; Tr. p. 11)

8. On November 12, 1997, the Department issued NTL number XXXXX to the taxpayer based on the decrease in inventory. The NTL shows that the taxpayer owes additional tax of \$4,899.72 and interest of \$61.62. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1; Tr. pp. 9-10)

9. On February 6, 1998, the Department issued a Notice of Final Billing to the taxpayer for NTL number XXXXX, which is the same NTL that the taxpayer timely protested. (Taxpayer Ex. #5; Tr. pp. 13-14)

CONCLUSIONS OF LAW:

One of the Department's employees testified that the NTL for motor fuel tax was issued after the taxpayer reduced its Illinois inventory from 25,788 gallons to zero. Section 21 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*) incorporates by reference section 4 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/4. Once the Department has established its *prima facie* case with the admission into evidence of the certified copy of the Department's assessment, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In response to the Department's *prima facie* case, the taxpayer presented evidence indicating that the NTL was either based on a nontaxable transaction or issued outside the statute of limitations period. The only explanation for the disappearance of the 25,788 gallons of unleaded gasoline is the following: either the taxpayer did not actually receive the gasoline from Texaco and incorrectly recorded it as a receipt of gasoline, or the gasoline was transferred on the Arco pipeline to Mexico, Missouri and inadvertently not recorded as a transfer on the taxpayer's books. Either way, there was no taxable transaction. Even if there was a taxable transaction, it occurred in 1987 and the NTL was issued well past the three year statute of limitations. (See 35 ILCS 505/21; 120/4) In addition, the Department admitted that the Notice of Final Billing issued on February 6, 1998 was for the NTL that is at issue in this case, and therefore the Notice of Final Billing should also be dismissed.

Recommendation:

For the foregoing reasons, it is recommended that the Notice of Tax Liability number XXXXX and the Notice of Final Billing issued on February 6, 1998 be dismissed.

Linda Olivero
Administrative Law Judge

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